Supreme Court, U.S.
FILED
APR 2 1 2004
OFFICE OF THE CLERK

No. 03-860

IN THE

SUPREME COURT OF THE UNITED STATES

J. MUNDY, et al.. – Petitioner

vs.

MORGAN RHEAD – Respondent

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The respondent asks leave to file the attached response to the petition for writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Respondent filed his own appeal to the district court's dismissal of his complaint and proceeded *in forma pauperis* before the Ninth Circuit Court of Appeals. Following the Ninth Circuit's reversal of the district court's dismissal, petitioner filed the instant petition for writ of certiorari.

Respondent's affidavit/ declaration in support of this motion to proceed *in forma pauperis* is attached hereto.

Dated: April 21, 2004

GERALD SINGLETON
110 West "C" Street, Suite 1505
San Diego, CA 92101

Counsel for Respondent Morgan Rhead

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, Morgan Rice, am the respondent in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You N/A	Spouse	You	Spouse N/A
Employment	$ 155.00	$ 0	$ 70.00	$ 0
Self-employment	$	$	$	$
Income from real property (such as rental income)	$ 0	$ 0	$ 0	$ 0
Interest and dividends	$ 0	$ 0	$ 0	$ 0
Gifts	$ 0	$ 0	$ 0	$ 0
Alimony	$ 0	$ 0	$ 0	$ 0
Child Support	$ 0	$ 0	$ 0	$ 0
Retirement (such as social security, pensions, annuities, insurance)	$	$	$	$
Disability (such as social security, insurance payments)	$ 0	$ 0	$ 0	$ 0
Unemployment payments	$ 0	$ 0	$ 0	$ 0
Public-assistance (such as welfare)	$ 0	$ 0	$ 0	$ 0
Other (specify): _____	$ 0	$ 0	$ 0	$ 0
Total monthly income:	$ 155.00	$ 0	$ 70.00	$ 0

SINGLETON & ASSOCIATES ID:619-702-5592 APR 14'04 12:56 NO.005 P.02

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
(WILD LIFE GREENHOUSES)			
STAN-JOAN RENOARDS	ESCONDIDO	4-2 / 4-1	$ 300 ea
SAN DIEGO ANIMAL CLINIC		1/03 - 5/03	$ 800 →
SAN MARCOS ANIMAL HOSP.		6/03 - 7/03	$ 750 →

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			$
			$
			$

4. How much cash do you and your spouse have? $ 0

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
		$	$
		$ 0	$
		$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value N/A

☐ Other real estate
Value N/A

☐ Motor Vehicle #1
Year, make & model N/A
Value

☐ Motor Vehicle #2
Year, make & model N/A
Value

☐ Other assets
Description CLOTHES - SURF BOARD
Value 350 ea

SINGLETON & ASSOCIATES ID:619-702-5592 APR 14'04 12:57 NO.003 P.03

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
None	$ 0	$ 0
	$	$
	$	$

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
None	Self.	

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	$ FRIENDS	$ 0
Are real estate taxes included? ☐ Yes ☐ No Is property insurance included? ☐ Yes ☐ No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 0	$ 0
Home maintenance (repairs and upkeep)	$ 0	$ 0
Food	$ 50.00	$ 0
Clothing	$ 0	$ 0
Laundry and dry-cleaning	$ 0	$ 0
Medical and dental expenses	$ 0	$ 0

SINGLETON & ASSOCIATES ID:619-702-5592 APR 14'04 12:57 NO.005 P.04

	You	Your spouse
Transportation (not including motor vehicle payments)	$	$
Recreation, entertainment, newspapers, magazines, etc.	$	$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$	$
Life	$	$
Health	$	$
Motor Vehicle	$	$
Other:	$	$
Taxes (not deducted from wages or included in mortgage payments)		
(specify):	$	$
Installment payments		
Motor Vehicle	$	$
Credit card(s)	$	$
Department store(s)	$	$
Other:	$	$
Alimony, maintenance, and support paid to others	$	$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$	$
Other (specify):	$	$
Total monthly expenses:	$	$

SINGLETON & ASSOCIATES 12:619-702-5592 APR 14'04 12:58 NO.003 P.05

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☑ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☑ Yes ☐ No

If yes, how much? $500.00 for both.

If yes, state the attorney's name, address, and telephone number:

for the form $500.00 One Newport Place
1301 Dove Street Suite
Newport Beach, CA 92660
(714) 251-0123
Phone

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☑ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I currently unemployed looking for work as well as I get help from my family and friends are helping support me.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 4-21-04, 20 04

Megan Rhodes
(Signature)

SINGLETON & ASSOCIATES ID:619-702-5592 APR 14'04 12:36 NO.033 P.03

IN THE

SUPREME COURT OF THE UNITED STATES

No. 03-860

J. MUNDAY, J. EASTMAN, G. HART, and CITY OF CARLSBAD POLICE DEPARTMENT,

PETITIONERS,

v.

MORGAN RHEAD,

RESPONDENT.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF *CERTIORARI* TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

GERALD SINGLETON
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Telephone: (619) 239-2196

Attorney for Respondent

TABLE OF AUTHORITIES

FEDERAL CASES

Heck v. Humphrey, 512 U.S. 477 (1994) 3,5,6
Smith v. City of Hemet, 356 F.3d 1138 (9th Cir. 2004) 3

STATE CASES

People v. Peacock, 68 N.Y.2d 675 (1986) 6
Nuno v. County of San Bernardino, 58 F. Supp. 2d 1127, 1135-39 (C.D. Cal. 1999) 6
Susag v. City of Lake Forest, 94 Cal. App. 4th 1401 (2002) 4,9,10

FEDERAL STATUTES

28 U.S.C. § 1254(1) 1
42 U.S.C. § 1983 2,5

CALIFORNIA PENAL CODES

Cal. Pen. Code § 69 1,2,6,8
Cal. Pen. Code § 148(a) 2,7

MISCELLANEOUS

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Cal. Pen. Code § 148(a) 2,7

MISCELLANEOUS

S. Ct. R. 10 3,4
Ninth Circuit Rule 36-3 4

STATEMENT OF JURISDICTION

The Ninth Circuit filed its unpublished memorandum decision on August 1, 2003 and denied petitioner's application for rehearing and rehearing en banc on September 11, 2003. The petition for a writ of certiorari is stamped received on December 12, 2003 (outside the 90-day period), but the docket reflects that it was filed on December 10, 2003. Petitioner asserts jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Respondent was riding his moped in Carlsbad, California on April 11, 2000. Officer J. Mundy stopped him for an inoperable tail light. After the stop, Officer Mundy asked respondent whether he had anything illegal. Respondent initially lied and told him that he did not. In fact, respondent had a small amount of Mexican marijuana. Respondent eventually admitted that he possessed the marijuana, and, a short while later, Officer G. Hart arrived on the scene. Officers Mundy and Hart found the marijuana. A short time later, a brutal attack on respondent ensued.

As a result of the incident, respondent was charged with two felony counts of violating California Penal Code § 69 (resisting or preventing an officer from performing his duties by means of force or violence) and a misdemeanor count of violating California Penal Code § 243(b) (battery on a peace officer). All of those

counts were dismissed. In return, respondent entered a nolo contendere plea to a misdemeanor charge of violating California Penal Code § 148(a). No factual basis, either in writing or orally, was presented for the plea. Instead, the judge simply accepted a plea to a charge that "on or about April 11, 2000, that [respondent] did unlawfully obstruct a peace officer acting within the course and scope of his duties, in violation of Penal Code Section 148(a)[.]"[1] The judge further advised respondent that his nolo contendere plea "would preserve any rights with respect to any civil proceedings."

Respondent then filed a complaint alleging, among other things, civil rights violations under 42 U.S.C. § 1983. His claim was based on the beating and other conduct of the officers after they found the marijuana.

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[1] A copy of the plea colloquy, which was made a part of the record in the district court, is attached as an Appendix.

ARGUMENT

I.

THE COURT SHOULD NOT GRANT CERTIORARI TO REVIEW AN UNPUBLISHED MEMORANDUM OF A COURT OF APPEALS THAT MERELY APPLIES AN ESTABLISHED RULE OF LAW TO A PARTICULAR SET OF FACTS AND DOES NOT OTHERWISE CONFLICT WITH A DECISION OF ANOTHER COURT OF APPEALS OR WITH A DECISION BY A STATE COURT OF LAST RESORT.

Rule 10 provides that, in determining whether to grant a petition for a writ of certiorari, this Court considers whether the lower court's decision is "in conflict with the decision of another United States court of appeals on the same important matter" or "conflicts with a decision by a state court of last resort . . . ." S. Ct. R. 10. Rule 10 further emphasizes that a "petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." *Id.*

This case fits into the "rarely granted" category, as petitioners are simply complaining about the lower court's application of *Heck v. Humphrey*, 512 U.S. 477 (1994) to the particular facts of this case. Actually, it is clear that the lower court was merely applying *Heck* to a case-specific set of facts because the same three-judge panel of the Ninth Circuit considered two *Heck* cases simultaneously. In the other case, *Smith v. City of Hemet*, 356 F.3d 1138 (9th Cir. 2004) (also

submitted for decision on July 8, 2003), the same three-judge panel issued a published opinion finding that, given the specific facts of that case, the plaintiff's section 1983 claim was barred by *Heck*.[2] In essence, the same panel applied *Heck* to two different sets of facts and reached two different results based on the differing facts in the record. Thus, this is the type of situation which "rarely" merits review by this Court according to Rule 10.

Not only does the petition simply dispute the application of a rule of law to a particular set of facts, but it also fails to identify any alleged lower court conflict meriting review under Rule 10. The only potential conflict pointed to by petitioners is with *Susag v. City of Lake Forest*, 94 Cal. App. 4th 1401 (2002), an opinion of an *intermediate* state appellate court, *not* a state court of last resort. In any event, as will be explained below, the *unpublished* memorandum of the court of appeals, which cannot create any *precedential* conflict, does not conflict with *Susag* or any other authority. Instead, it simply constitutes a straightforward application of *Heck* to a specific set of facts, an application which has been distorted by petitioners in an attempt to create a petition for a writ of certiorari that is worthy of review.

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[2] Unlike the published opinion in *Smith*, the unpublished memorandum in this case cannot be cited as precedent. *See* Ninth Circuit Rule 36-3.

II.

PETITIONERS ARE ASKING THE COURT TO REVIEW A QUESTION THAT IS NOT PRESENTED BY THE FACTS OF THIS CASE.

Petitioners have phrased their main question presented as follows: "Do civil defendants seeking summary judgment under *Heck v. Humphrey*, 512 U.S. 477 (1994) carry their initial burden by presenting evidence of a prior conviction that is inconsistent on its face with the Section 1983 claims alleged in the complaint, or must the civil defendants further prove the factual basis for the conviction?" Petitioners further suggest in their argument that a burden-shifting approach should be adopted when considering *Heck* claims at the summary judgment stage. Unfortunately for petitioners, the facts of this case do not present these questions. The question presented *assumes* that petitioners satisfied an initial burden by presenting evidence that the respondent sustained a conviction that was facially inconsistent with the section 1983 claims in his complaint.[3] The whole point of the lower court's decision, however, is that this assumption is incorrect.

Although the question presented uses the language "inconsistent on its

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[3] Given the language in the question presented and their suggested burden-shifting approach, petitioners apparently concede that, at the summary judgment stage, they had an initial burden of demonstrating that the complaint should be dismissed under *Heck*.

face," the actual standard articulated in *Heck* is "whether a judgment in favor of the plaintiff would *necessarily* imply the invalidity of his conviction or sentence . . . ." *Heck*, 512 U.S. at 487 (emphasis added).[4] The court of appeals found that, given the evidence presented, a judgment in respondent's favor would not "necessarily" imply the invalidity of his conviction. The evidence offered revealed that respondent's misdemeanor conviction for violating California Penal Code § 148(a), a statute which encompasses conduct much broader than "resisting arrest," was obtained as a result of a nolo contendere plea.[5] Respondent did not

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[4] As an example, the Court stated that a defendant convicted of resisting arrest, defined as preventing a lawful arrest, could not later file a section 1983 action alleging a violation of his Fourth Amendment right to be free from unreasonable seizures. *See Heck*, 512 U.S. at 486 n.6. In describing its hypothetical statute of conviction, the Court cited *People v. Peacock*, 68 N.Y.2d 675 (1986), a case where the defendant's conviction for resisting arrest was overturned because the arresting officer did not have probable cause. Thus, it is not entirely clear whether the Court was focusing on claims of excessive force, which is the claim here.

[5] It is entirely unclear whether a nolo contendere plea to a misdemeanor in California can ever bar a section 1983 claim under *Heck*. Although petitioners contend that a nolo contendere plea in California is the same as a guilty plea, they fail to address the language in California Penal Code § 1016 which states that, in misdemeanor cases, a nolo contendere "plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, and factual basis for, the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based." It is therefore hard to imagine that success in any section 1983 claim would "necessarily" imply the invalidity of a misdemeanor, nolo contendere plea in California. *But see Nuno v. County of San Bernardino*, 58 F. Supp. 2d 1127,

provide a factual basis at the plea colloquy. The written plea form did not contain a factual basis for the plea, nor did the prosecutor articulate one at the plea hearing. There was not even a written charge underlying the count of conviction.

Instead, the judge simply asked respondent how he pled to a charge that "on or about April 11, 2000, that you did unlawfully *obstruct* a peace officer *acting within the course and scope of his duties*, in violation of Penal Code Section 148(a)?" Thus, although section 148(a) specifically applies to a person who "resists" as well as a person who "obstructs" an officer, it is clear that the judge only accepted a plea to obstructing. Moreover, the plea was not to obstructing an "arrest," but was only to obstructing an officer "acting within the course and scope of his duties." Thus, even though petitioners repeatedly refer to respondent's conviction as "resisting arrest," the actual plea taken by the judge reveals that was not the basis of the conviction. Instead, the record indicates that the plea was for obstructing an officer in the course of his duties, which, for example, could have been based on respondents' conduct in dealing with Officer Mundy concerning the

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1135-39 (C.D. Cal. 1999).

taillight infraction or his initial obstruction of Officer Mundy's inquiry into whether he had anything illegal in his possession.[6]

Respondent's excessive force claims are based on conduct by the officers that occurred at a distinct time *after* he obstructed Officer Mundy's initial inquiries and therefore do not implicate the validity of Officer Mundy's initial investigation. Indeed, the claims are based on the brutal beating that he suffered after he eventually admitted to Officer Mundy that he was in possession of an illegal substance, and the excessive force was initiated by Officer Hart, who was not even present when respondent obstructed Officer Mundy's inquiry. As a result, the court of appeals correctly determined that the record failed to show that

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[6] Respondent pointed this out in his response to petitioners' motion for summary judgment. Petitioners replied that this could not be the basis for the plea because the prosecutor characterized the misdemeanor count of conviction as "basically" a lesser included offense of the original felony charge under California Penal Code § 69. Section 69, however, applies to individuals who, by means of threats, violence, or force, either resist an officer or deter or prevent the officer from performing his duties. Thus, like section 148, section 69 applies to both resisting and obstructing. The prosecutor's characterization of the charge as "basically" a lesser included offense is therefore consistent with the fact that the plea was merely for obstructing without any violence or force, not for resisting arrest. In any event, the prosecutor's characterization of what the charge "basically" was is irrelevant when considering that the judge only accepted a plea to obstructing an officer in the course of his duties, not to resisting arrest.

a judgment in favor of respondent on his section 1983 claim would "necessarily" imply the invalidity of his conviction.[7]

In short, petitioners erroneously believe that they produced evidence that respondent was convicted of "resisting arrest" and therefore incorrectly assume that they satisfied their "initial burden" of presenting evidence of a prior conviction that is "inconsistent on its face" with respondent's excessive force claims. While petitioners presented evidence that respondent sustained a conviction under section 148(a), they presented no evidence that it was for "resisting arrest." Indeed, everything in the record indicates that the conviction was *not* for "resisting arrest."[8]

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[7] Petitioners concede that a section 1983 plaintiff convicted of resisting arrest can assert an excessive force claim under *Heck* for force applied after the arrest. Of course, respondent was not convicted of resisting arrest. Even if he did sustain such a conviction, however, the petitioners' concession reveals that respondent's excessive force claim is not barred under *Heck*. Respondent's section 1983 claim stems from excessive force applied by the officers after they found the marijuana. At that point, respondent was clearly arrested. Indeed, the officers had probable cause, based on the marijuana that they found, and no reasonable person would feel free to leave under the circumstances.

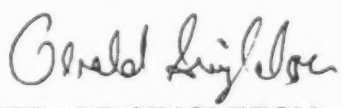
[8] It is for this reason that petitioners' reliance on *Susag v. City of Lake Forest*, 94 Cal. App. 4th 1401 (2002) is misplaced. The plaintiff in that case was found guilty after a jury trial of "*resisting* or obstructing" an officer, *id.* at 1406 (emphasis added), and the plaintiff's claims were based on conduct *before* he was ultimately subdued. *Id.* at 1409-10. Thus, the defendants raised a viable claim that the plaintiff's conviction was in fact for resisting arrest and that his section 1983 claims based on pre-arrest conduct were inconsistent with his conviction.

Finally, the court of appeals noted that the judge stated at the plea colloquy that respondent's nolo contendere plea "would preserve any rights with respect to any civil proceedings." Without citation to authority, petitioners complain that this comment by the court of appeals was somehow improper. Even assuming petitioners' unsupported position is correct, the comment was not the linchpin of the court of appeals' decision and was simply one example of how the record did not indicate that respondent's section 1983 claims would necessarily imply the invalidity of his conviction.

CONCLUSION

For the foregoing reasons, the Court should deny the petition for a writ of certiorari.

Respectfully submitted,



Dated: April 21, 2004

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Telephone: (619) 239-2196

Indeed, the facts outlined in the *Susag* opinion demonstrate that the plaintiff was in fact convicted of resisting arrest. *Id.* at 1406-07. Here, the evidence presented by petitioners established that respondent was *not* convicted of resisting arrest.

APPENDIX

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT "6" HON. DANA M. SABRAW, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF, VS. MORGAN RHEAD, DEFENDANT.	NO. SCN113162 CHANGE OF PLEA/ SENTENCING

REPORTER'S TRANSCRIPT

OCTOBER 12, 2000

APPEARANCES:

FOR THE PEOPLE: PAUL PFINGST
DISTRICT ATTORNEY
BY: STEVE CARVER
DEPUTY DISTRICT ATTORNEY

FOR THE DEFENDANT: SHANNON THOMPSON
ATTORNEY AT LAW

DIANE KIRSCH, CSR #9679
OFFICIAL REPORTER
VISTA, CALIFORNIA 92083

COPY

EXHIBIT A

VISTA, CALIFORNIA, THURSDAY, OCTOBER 12, 2000

* * *

THE COURT: THIS IS AN ADD ON. PEOPLE VERSUS MORGAN RHEAD, SCN113162. MY I HAVE APPEARANCES.

MR. CARVER: STEVE CARVER FOR THE PEOPLE.

MS. THOMPSON: SHANNON THOMPSON FOR THE DEFENDANT.

MR. CARVER: AS A SPECIAL ISSUE, I WOULD LIKE TO AMEND THE INFORMATION TO ADD A COUNT FOUR, PENAL CODE SECTION 148(A), RESISTING AN ARREST, AND THAT WOULD BE AN L.I.O. BASICALLY OF COUNT 1, P.C. 69.

THE COURT: SO STIPULATED?

MS. THOMPSON: SO STIPULATED, YOUR HONOR.

THE COURT: WITH THAT STIPULATED L.I.O. AS A PLEA TO A MISDEMEANOR UNDER PENAL CODE SECTION 148.

MR. CARVER: CORRECT.

MS. THOMPSON: CORRECT. 148(A).

THE COURT: MS. THOMPSON, YOU HAVE ADVISED MR. RHEAD OF HIS CONSTITUTIONAL RIGHTS, CONSEQUENCES OF THE PLEA?

MS. THOMPSON: YES, YOUR HONOR.

THE COURT: MR. RHEAD, I HAVE A CHANGE OF PLEA FORM IN FRONT OF ME, WHICH I AM SHOWING YOU. YOU HAVE INITIALED, SIGNED AND DATED THIS FORM ON ALL PROVIDED PLACES?

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: THAT INDICATES TO ME, THAT YOU UNDERSTAND YOUR CONSTITUTIONAL RIGHTS, YOU ARE GIVING UP

THOSE RIGHTS AND YOU UNDERSTAND THE CONSEQUENCES OF THE PLEA, CORRECT?

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: HOW DO YOU PLEAD THAT ON OR ABOUT APRIL 11, 2000, THAT YOU DID UNLAWFULLY OBSTRUCT A PEACE OFFICER ACTING WITHIN THE COURSE AND SCOPE OF HIS DUTIES, IN VIOLATION OF PENAL CODE SECTION 148(A)? AS I UNDERSTAND THE PLEA WOULD BE A NO CONTEST, CORRECT?

THE DEFENDANT: YES, SIR.

THE COURT: AND YOU PLEAD GUILTY WITH THE UNDERSTANDING THAT IT IS A NO CONTEST PLEA, CORRECT?

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: PEOPLE ARE SATISFIED?

MR. CARVER: PEOPLE ARE SATISFIED, YES, YOUR HONOR.

THE COURT: IT'S MY UNDERSTANDING THERE HAS BEEN SOME DISCUSSIONS IN CHAMBERS THAT WITH THIS TYPE OF PLEA, A NO CONTEST PLEA, HAS THE SAME FORCE AND EFFECT FOR CRIMINAL LAW PURPOSES. IT WOULD PRESERVE ANY RIGHTS WITH RESPECT TO ANY CIVIL PROCEEDINGS. YOU DO UNDERSTAND THAT, CORRECT?

THE DEFENDANT: OH, YES, SIR.

THE COURT: OKAY. THE PLEA IS ACCEPTED. I'LL SIGN THE FINDINGS AND ORDER ON THE CHANGE OF PLEA.

PEOPLE'S MOTION AS TO THE BALANCE?

MR. CARVER: MOVE TO DISMISS, YOUR HONOR, BASED ON THIS PLEA AGREEMENT.

THE COURT: ALL RIGHT. I HAVE SET THIS PLEA

UP AS A STIPULATED C.T.S. IT IS PURSUANT TO RULE 412, AND WITH THAT, I WOULD ACCEPT THE PLEA, SIGN THE FINDINGS AND ORDER ON THE CHANGE OF PLEA.

WITH REGARD TO SENTENCING, WE DISCUSSED A NUMBER OF TERMS AND CONDITIONS IN CHAMBERS, AND IS IT SUBMITTED ON THE COURT'S INDICATED?

MS. THOMPSON: YES, YOUR HONOR.

MR. CARVER: PEOPLE SUBMIT.

THE COURT: OKAY. IT'S GOING TO BE TWO YEARS SUMMARY PROBATION OR PROBATION TO THE COURT, NO SAME OR SIMILAR VIOLATION, VIOLATE NO LAWS, MINOR TRAFFIC EXCEPTED, NO FORCE OR VIOLENCE TO ANOTHER PERSON, A FOURTH WAIVER. SO YOU WOULD SUBMIT YOUR PERSON, PROPERTY OR RESIDENCE TO SEARCH AT ANY TIME FOR A TWO YEAR PERIOD. THE FINE WOULD BE $250, FIVE DAYS OF PUBLIC WORK SERVICE, RESTITUTION IS RESERVED. WITH RESPECT TO THE FINE PAYMENT AND THE PUBLIC WORK SERVICE, I WOULD ASK THAT YOU REPORT TO THE S.A.A.U. UNIT, THE C.R.O. UNIT, THEY WILL ADDRESS WITH YOU THE FINE PAYMENT AND ENROLLMENT IN PUBLIC WORK SERVICE.

OKAY. HAVE WE ADDRESSED ALL TERMS AND CONDITIONS?

MS. THOMPSON: I BELIEVE SO, YOUR HONOR, YES.

MR. CARVER: YES, YOUR HONOR.

THE COURT: THANK YOU.

MS. THOMPSON: THANK YOU, YOUR HONOR.

/ / /

/ / /

BEST AVAILABLE COPY

STATE OF CALIFORNIA)
)
) SS:
COUNTY OF SAN DIEGO)

I, DIANE KIRSCH, CSR, CERTIFICATE NO. 9679, AN OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO, HEREBY CERTIFY THAT I REPORTED IN MACHINE SHORTHAND THE PROCEEDINGS IN THE WITHIN CASE, AND THAT THE FOREGOING TRANSCRIPT, CONSISTING OF PAGES NUMBERED FROM 1 TO 5 INCLUSIVE, IS A FULL, TRUE AND CORRECT TRANSCRIPTION OF THE PROCEEDINGS IN THIS CASE.

DATED AT SAN DIEGO, CALIFORNIA, THIS 28TH DAY OF JUNE, 2001.

Diane Kirsch

DIANE KIRSCH, CSR #9679
OFFICIAL REPORTER